

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 610
Judiciary

(Delegate Cardin)

Estates - Execution of a Will - Witness Requirements

This bill prohibits the personal representative of the estate, or an interested party, from attesting and signing as a credible witness of a will.

Fiscal Summary

State Effect: The bill is not anticipated to affect State operations or finances.

Local Effect: The bill is not anticipated to affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Definition and Execution of a Will

“Will” is defined under the Estates and Trusts Article of the Maryland Code as a record that the testator (person making a will) intends to adopt as the testator’s codicil or testamentary instrument and that (1) appoints a personal representative, revokes or revises another will, nominates a guardian, directs the disposition of the testator’s property, or expressly excludes or limits the right of an individual or class to succeed to property of a decedent passing by intestate succession and (2) is executed in the form prescribed by, and has not been revoked in a manner provided by, specified statutory provisions.

In general, every will must be (1) in writing; (2) signed by the testator, or by another person

on behalf of the testator, in the testator's physical presence and by the testator's express direction; and (3) attested and signed by two or more credible witnesses in the physical presence of the testator or, provided certain requirements are satisfied, the electronic presence of the testator.

Due Execution of a Will

The court in *Sadie M. Castruccio v. The Estate of Peter A. Castruccio et al.*, 456 Md. 1, 169 A.3d 431 (2017) affirmed the principle set forth in *Slack v. Truitt*, 368 Md. 2, 791 A.2d 129 (2002) that "a presumption of due execution attaches to a will that contains the testator's signature and an attestation clause signed by the witnesses." The court in *Castruccio* further noted that the validity of a will does not depend on an attestation clause, but upon conformity of the execution with the requirements of the statute.

Personal Representative

A personal representative is a fiduciary and has the responsibility of settling and distributing a deceased person's estate.

Under Title 7, Subtitle 6 of the Estates and Trusts Article, a personal representative or special administrator is entitled to reasonable compensation for services. If a will provides a stated compensation for a personal representative, additional compensation must be allowed if the amount given is insufficient in the judgment of the court. Unless a will provides a larger measure of compensation, on petition filed in reasonable detail by the personal representative or special administrator, the court is authorized to allow the commissions it considers appropriate, in accordance with specified limits. If the property subject to administration is not more than \$20,000, then the commission may not exceed 9%. However, if the property subject to administration is more than \$20,000 then the commission may not exceed \$1,800 plus 3.6% of the amount over \$20,000. The adequacy of a commission may be appealed to circuit court. A personal representative may also renounce at any time all or a part of the right to compensation.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2023
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